

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 791 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

R D PATEL

Versus

GUJARAT SMALL INDUSTRIES CORPN

Appearance:

MR GIRISH PATEL for Petitioners

MR PV HATHI for Respondent No. 1

MRS VAIBHAVI NANAVATI for Private Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 16/06/97

ORAL JUDGEMENT

Heard the learned counsel for the parties.

2. Originally this petition has been filed by six petitioners. Later on, 14 more petitioners have joined in this petition.

3. The petitioners prayed for grant of writ of

certiorari, mandamus or any other appropriate writ, direction or order declaring the appointments of respondent Nos.3 to 34 as illegal, unconstitutional and arbitrary and quashing the same. Further prayers have been made for direction to the Corporation and its Officers and agents to make the appointments in accordance with law and the service rules of the Corporation. Last prayer has been made for direction to the Corporation and its Officers and agents to exercise their discretionary power in the matter of relaxation for the purposes of promotion justly, reasonably and in accordance with law.

4. The petitioners could not get the respondents No.8, 15, 17, 23 and 24 served with the notice of this Special Civil Application. On the request of the learned counsel for the petitioners under the order dated 21st April, 1997, the names of the respondents No.8, 15, 17, 23 and 24 were ordered to be deleted. So the appointments of the aforesaid respondents which were stated to be illegally and arbitrarily made, are no more under challenge. Shri P.V. Hathi, the counsel for the Corporation made a statement before this Court that out of the 32 respondents, 18 respondents have resigned or have taken voluntary retirement and are not in service of the Corporation. The services of one of the respondents is terminated. The counsel for the Corporation made further statement before this Court that the petitioners No.1, 2 and 3 are holding the higher post. These facts have not been controverted by the counsel for the petitioners. So the fact remains that out of 32 respondents, 19 respondents are no more in service of the Corporation. So more than 50% private respondents are no more in service.

5. The counsel for the petitioners made three fold submissions in this Special Civil Application. The first contention has been made that the Corporation has acted arbitrarily in making the appointments in number more than the number of the posts for which the applications were invited. It has next been contended that some of the appointments have been made without any advertisement and the last submission has been made that after inviting the applications, certain relaxation has been made in the matter of the eligibility.

6. Out of the six original petitioners, the petitioners No.1, 2 and 3 are the individuals whereas the other three petitioners are the Union, its President and its Secretary respectively. The first three petitioners are holding the next higher posts. The counsel for the

petitioners admit that out of the six petitioners, two petitioners had applied for the post advertised by the Corporation and one petitioner had not applied. So far as the added petitioners are concerned, the counsel for the petitioners very fairly submitted that he is not in a position to say whether those persons had applied for the post advertised or not. When two petitioners applied for the post and were unable to get selected, I fail to see any justification in their action of challenging the appointments of the respondents. So far as the third petitioner is concerned, he has not applied for the post, and as such, it cannot be said that any of his legal or fundamental rights are being infringed. So far as the other added petitioners are concerned, it is not their case that they have not been afforded an opportunity of availing of their constitutional right of consideration for appointment in a public employment. All the eligible candidates have a right of consideration for appointment and not the right of appointment. That right has not been denied to the petitioners, and as such, the challenge which has been made by them to the appointments of the respondents does not call for any interference. However, the respondents have given out a cogent explanation of making of the appointments on more posts than the number of posts advertised. It is true that the appointments should be restricted to the number of the posts for which the applications were invited, but it is a matter of the year 1970s and as such, only on this ground, I do not consider it to be in the larger interest to quash the appointments of the respondents made in excess of the number of the posts advertised. Moreover, as stated earlier, when the petitioners themselves have given up their challenge to the appointments of the respondents No.8, 15, 17, 23 and 24, and nineteen respondents are no more in service, no relief of the nature as prayed for by the petitioners deserves to be granted. Here is a case where the challenge of the appointments of some of the respondents have been given up and in case the prayer as made by the petitioners is accepted then it will amount to maintaining the appointments of some of the candidates and quashing of the appointments of some of the candidates who have been given the appointments after facing one and the same selection. So even if there is some merit in the contention of the counsel for the petitioners, for the reasons aforesaid, it is not a fit case where these respondents should be ousted from service after so many years.

7. The other ground given by the petitioners that the appointments have been made without inviting

applications, that too deserves no acceptance. The Corporation had selected few candidates from its own employees without holding any interview. However, after verifying their service record. The union and other employees of the Corporation made protest against these appointments. Keeping in view the feelings of the Union and other employees, the Corporation had again invited applications from its own employees by circular dated 4th January, 1980. Thereafter, the Selection Committee was constituted and had taken interviews of all those who made the applications in response to the circular dated 4th January, 1980 and those who were appointed initially without holding any interview. So the grievance was only against the appointments of the Corporation's own employees and that no more survives as all the employees have been given equal opportunity to exercise their right of consideration for selection and appointment in the service.

8. So far as the last contention is concerned, that too deserves no acceptance. In this category, the case of respondent No.24 fall. The challenge to the appointment of the respondent No.24 has been given up by the petitioner and some of those persons would not be in service as 19 respondents out of 32 are no more in service of the Corporation. More so, when one petitioner has not chosen to apply for the post and two others have applied for the post, the petitioners who applied have not made any grievance that in their cases also relaxation should have been made. The petitioners who have not applied for the post cannot make such a grievance. Lastly, after more than 17 years of their appointments, I do not consider it to be appropriate to quash those appointments on this ground, more so, when the petitioners No.1, 2 and 3 have already reached to the higher posts. It is not the case of the counsel for the petitioners that other petitioners have also not been promoted.

9. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted by this Court stands vacated.
